

## SchoolWorks Awarded \$650,000 in Grants to Address Educational Needs of Dependent and Delinquent Children and Youth

Juvenile Rights Project, Inc. created the SchoolWorks program in 2002 in response to the poor educational outcomes we have witnessed for our dependency and delinquency clients. Many of them struggle academically and behaviorally. Many in foster care have attended a number of schools, and with each move, have fallen farther and farther behind their peers. Both research and our experience show, as well, that the prevalence of learning and other disabilities in both the foster care and juvenile justice populations far exceed the rates seen in the general student population.

The goal of SchoolWorks, simply put, is to keep at risk children and youth "in school and out of trouble."

SchoolWorks has been supported primarily through the federal Edward J. Byrne Memorial

Violence Prevention Grant Program. JRP has received annual awards from the Byrne program in 2002-2006. Based upon its success during the first three and a half years of the program, the Meyer Memorial Trust and Portland Children's Investment Fund (CHIF) have awarded JRP a total of \$650,000 for 2006 through June 2008.

Meyer Memorial Trust Executive Director Doug Stamm said, "The Juvenile Rights Project levels the playing field for children and youth whose families are unable to advocate for their educational needs."

Outcome data on students served by SchoolWorks show it is successful in helping children stay in school, improve their academic performance and reduce their disciplinary actions. (Continued, Page 14 )

### OAC Completes 14-month Investigation of Foster Child Tasered in School

By Mark S. McKechnie

In October 2004 police officers dressed in riot gear tasered an 11 year-old boy. The boy was a mere 4'11" tall and weighed 65 pounds. He was handcuffed by the four police officers after the 50,000-volt taser incapacitated him. He was a fifth grader and in his special education classroom at the time. By the time of the incident, he had spent over half of his life in the custody of the Oregon Department of Human Services.

The Oregon Advocacy Center (OAC), a federally-chartered non-profit organization designed to protect the rights of individuals with disabilities in Oregon spent 14 months trying to obtain records and determine why the incident happened and how such incidents could be avoided in the future.

At the time of the incident, J (as he is called in the OAC report) was a client of a residential treatment program in Oregon. He was

part of one of the pilot projects designed to allow children to be placed in the community as they prepare to transition out of residential settings. He had been placed in foster care and enrolled in a special education classroom in the local school district in September 2004.

The incident occurred on a Monday in October. J had been sent home by the school on the previous Friday because he suffered what was described as an "emotional breakdown." Despite this warning that J was in a very fragile emotional state, the OAC investigation found no planning occurred to support him upon his return to school after the weekend. The day that the school called police to respond, J had barricaded himself in his special education classroom and was hold-

ing a drawing compass. The school staff had already removed themselves and all of the other students from the classroom.

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**University of Oregon School of Law announces:**

***"Protecting Children's Need for Nurturance: Proven Strategies and New Ideas"*** at the University of Oregon School of Law March 24-25.

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OAC was never able to obtain from DHS the total number of foster placements J has experienced since 1998, but it noted at least two prior to his admission to the residential program and three foster placements in the three-week period immediately preceding the tasing incident. School staff saw these rapid placement changes as a contributing factor. Concerns noted in records by J's therapist about the lack of stability in J's life would indicate that he had experienced other placements, as well. Records also included at least one psychiatric hospitalization at age five.

OAC found no records indicating any meeting to discuss the rapid placement changes that occurred preceding the October 2004 incident. It found that J's history of explosive outbursts was well-known, yet no one seemed to contemplate the effect these multiple placement disruptions would have in exacerbating J's existing behaviors.

The report also notes that J was being treated for Post-Traumatic Stress Disorder, Oppositional Defiant Disorder and a cognitive disorder, possibly related to Fetal Alcohol Syndrome, which was suspected but not confirmed by treatment providers. J was still under the care of the residential program at the time of the incident, and he was placed in a special education classroom, where the incident occurred. OAC found out that J has only recently disclosed suffering extensive sexual abuse, in addition to the physical abuse and neglect

that was already known.

OAC notes a number of systemic failures in this case. Unfortunately, these lapses are not uncommon with children like J. OAC obtained hundreds of pages of reports and other documents related to J's history, the police incident and the responses by various agencies involved. The investigator found a substantial lack of coordination, communication and planning between school district representatives, treatment providers and J's legal custodian.

J, as a special education student, had an Individualized Education Program (IEP) that extensively discussed behavioral goals for him but lacked useful information for teachers and other school staff, such as a Behavioral Support Plan, on managing or responding to his behavior. Much of the behavioral intervention planning that had been done, which OAC describes as elaborate, was applicable only in the residential setting. J's teacher noted, in addition, that she was unaware of his specific diagnoses.

OAC found no copies of crisis or behavioral intervention plans in his school file, yet the report points out that such plans should be a standard part of an IEP for students such as J. OAC also found that J had not yet met the criteria set by the residential treatment program that was supposed to determine his ability to transition from the residential setting to a foster home and school setting in the community.

Based upon these and other disturbing findings contained in the full report (which can be obtained at [www.oradvocacy.org](http://www.oradvocacy.org)), OAC

(Continued, page12)

*"In October 2004 police officers dressed in riot gear tasered an 11 year-old boy. The boy was a mere 4'11" tall and weighed 65 pounds at the time. "*

## PRACTITIONER RESOURCES

The web site of the National Child Welfare Resource Center on Legal and Judicial Issues, a section of the American Bar Association Center on Children and the Law, contains many resources useful to juvenile law practitioners. The online resources include articles on ASFA, Child Welfare Court Improvement, Education Law, Immigration Law and other issues related to children and juvenile law.

The Center also distributes many publications. They include subjects such as educational advocacy, permanency planning for foster children, cultural awareness and

many other areas.

The site also links to several relevant list serves. There are lists for juvenile court improvement projects, general litigation issues in neglect and abuse cases and education law.

Links to many juvenile law-related organizations are also be found on the site, including ones that deal with immigration, dependency and neglect, the judiciary, child welfare organizations, adoption and related issues.

The Center's web address is:  
<http://www.abanet.org/child/rccli/>

### **CAPTA Requires DHS to Refer Children to Early Intervention**

The 2003 reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA) requires state child welfare agencies to refer every child from birth to three years of age who is the subject of a founded child abuse and neglect allegation to the local Early Intervention program for assessment. DHS has developed a referral form that can be found on their policy page:

[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e8.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e8.htm)

## Impact of 1999 Foster Care Independence Act: Early Results are Disappointing

By Mark McKechnie, MSW

The Chapin Hall Center for Children and Youth at the University of Chicago has released a new report on outcomes for youth transitioning from foster care, "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19." The longitudinal study followed youth in Illinois, Wisconsin and Iowa at three points in time. The report states that it is the only longitudinal study on outcomes for youth who came of age after the passage of the federal Foster Care Independence Act of 1999.

All youth in the study had entered foster care prior to age 16. The report compared outcomes for youth still in foster care at age 19 and those who had left care by that time. The outcomes of both groups are compared to 19 year-olds in the general population. Researchers noted that most of the foster and former foster youth maintained re-

lationships with their families of origin, and many of those who had left care were living with family members. Of the youth who had left care, 35% reported living with biological parents or other relatives, compared to 29% who reported living in their "own place."

The John H. Chafee Foster Care Independence Program provides federal funds to states for independent living services in six life domains: youth development, housing, educational assistance, employment training and assistance, health education and budgeting and financial management. The Chapin Hall study found that just over half of the youth in their study received educational support, while fewer than half received support in at least one of the other five domains.

Youth still in care at age 19 had far better educational outcomes than those who had left care, yet both groups had significantly worse

outcomes in the areas of high school or GED completion, enrollment in any educational program and enrollment in four-year college programs. (Continued, p. 4)

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# Oregon Youth Authority -- Functional Family Therapy Program Protocol

The Oregon Youth Authority (OYA) was one of the state agencies directed by the Oregon Legislature in 2003 to increase the use of "evidence-based practices" under SB 267.

Functional Family Therapy (FFT) is an evidence-based family intervention designed for at-risk youth. According to the Oregon Youth Authority, it is best considered an "aftercare" resource rather than a "transition resource." Referrals should be made when a youth is nearing a return home, has just returned home, or before out-of-home placement is imminent.

The therapy works best with youth who are over 10 years old and cognitively, psychologically, and developmentally able to participate. Before being referred to the program, the youth should have a family or long term placement resource willing to participate with them, and the youth should be placed with that family when the FFT services begin. The youth should not be at risk for out of home placement.

To participate in FFT a probation officer (P.O.) must identify a youth as a candidate for the program, using the above listed crite-

ria. Once the P.O. makes the referral and it is approved by the supervisor, then the family may begin participating in FFT. The family will typically have weekly sessions with the therapist. The therapist communicates weekly with the P.O., submits monthly reports, and monitors the youth's progress.

OYA contracts with Homestead Youth and Family Services, Inc. for statewide FFT implementation coordination and quality assurance services. For more information, contact Elisa Doeblir-Irvine at [doeblir@oregontrail.net](mailto:doeblir@oregontrail.net) or you can reach her at 541-276-5433.

## Foster Care Independence Study — Continued from page 3

Given the poor educational outcomes and lack of support for these youth overall, the experience of economic hardship by youth who have left care should come as no surprise. What was somewhat more surprising were the economic hardships experienced by those youth still in care at age 19.

Some of the economic hardships experienced by the 19 year-olds in the study included:

Outcome	No Longer In Care	Still in Care
Ever homeless since leaving care	13.8%	N/A
Sometimes not enough to eat	11.5%	3.6%
Evicted	7.4%	1.1%
Phone Service Disconnected	22.1%	20.0%
Gas or electricity shut off	4.2%	1.8%
Not enough money to pay utility bill	17.4%	6.5%
Not enough to pay rent	18.6%	4.7%
Not enough money to buy clothing	39.9%	36.1%

Foster and former foster youth at age 19 were one-and-a-half to two times as likely to lack the resources to meet basic living needs than were 19 year olds in a representative sample of the general population.

Nearly half of the females in the foster care study had reported ever being pregnant, compared to 20% of their peers in the general population. Foster youth who had left care had significantly less access to health, mental health and dental care than those still in care, yet both groups had a higher prevalence of health and mental health concerns than in the general population.

Youth in this study were more likely to be disconnected from school or employment than youth in the general population. While only 12.3% of youth in the general population sample reported disconnection from school and employment, those rates were 24.1% for youth still in care and 37.0% for those no longer in care.

The abstract, executive summary and full version of this report can be accessed at on the Chapin Hall web site at: [http://www.chapinhall.org/article\\_abstract.aspx?ar=1355&L2=61&L3=130](http://www.chapinhall.org/article_abstract.aspx?ar=1355&L2=61&L3=130).



# Federal Funding for Abused, Neglected Children Takes Another Hit

The Center for Law and Public Policy has issued a summary of "Deficit Reduction Act of 2005" actions, entitled "Final 2006 Budget Bill Cuts Services to Abused and Neglected Children."

The budget bill, S. 1932, was signed by President Bush on February 8, 2006. Among the impacts of the new budget are:

- A negation of the U.S. Court of Appeals decision in Rosales v. Thompson, which had expanded opportunities for children placed in foster care with relatives to be eligible for Title IV-E funding, which helps cover the costs of food, clothing, shelter, child care and other needs. The Rosales decision impacted an estimated 4,000 children living with relatives in Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. The estimated cut in federal funding over five years is \$380 million.
- A \$174 million cut to federal support for foster care case-work services provided by states.
- A \$760 million cut in services to children in foster care and others over five years by restricting access to the Medicaid Targeted Case Management program.

## Cuts in Spite of Known Benefits of Relative Foster Care

In analyzing the impact of the cuts, authors of the CLASP report, Casey Trupin, Vicki Turetsky and Ruteledge Hutson, point to research on children in the foster care system who are placed with relatives. They cite research which demonstrates that children placed with

grandparents and other relatives experience greater placement stability and other outcomes than their peers placed with unrelated foster parents.

Research has also demonstrated that children placed with relatives also have more frequent contact with birth parents and siblings.

Federal law and other public policy developed in recent years has expressed a strong preference for relative placements. Federal law requires states to consider relative preferences in their state child welfare laws and policies.

Relative placements are seen as desirable, as well, in the face of shortages of both foster homes and adoptive resources for children in child welfare systems across the country.

In addition to the positive outcomes associated with relative foster care, restrictions on support for relative foster providers and the children in their care also ignore the unique needs of relative caregivers, according to the report.

The authors cite research showing that relative foster providers are more likely to need assistance than non-relative foster parents. Relatives are less prepared to care for a child who has been traumatized, and they often receive little notice before the child is placed in their care.

In addition, CLASP cites a report from the Urban Institute, which shows that children placed by the court with relatives are twice as likely to live in households with incomes below 200 percent of the federal poverty line, as compared to children placed with non-relative caregivers.

## Two Modest Increases also noted by CLASP

The report does note two modest funding increases in the bill. The budget includes:

- A \$40 million increase in mandatory funding for the Promoting Safe and Stable Families Program (PSSF) for 2006. (Discretionary funding for the same program was cut \$9.4 million, however.) PSSF funds a range of services to support families in crisis, prevent child maltreatment, safely reunify families or support adoption for children who cannot be safely reunified with parents.
- The addition of \$100 million in mandatory funding for court improvement projects over five years. The appropriation provides \$10 million per year in two grant programs to be used to improve how courts handle child welfare cases.

Further information on federal budget reconciliation can be found on the CLASP web site: <http://www.clasp.org/NewsFlash/Reconcil/>

## In Memoriam

The staff of the Juvenile Rights Project express their deepest condolences to the family of Lisa A. Stern.

Lisa worked as a legal assistant at JRP for five years, until 2003. Lisa passed away of pneumonia and kidney disease on February 18, 2006. She was 36.

## Recent Cases

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### **Education: Schaffer v. Weast**

This case involves a dispute between the parents of Brian Schaffer and the Board of Education of Montgomery County, Maryland. Schaffer's parents claimed the Individualized Education Program (IEP) that the school system devised for their son was inadequate and sought an administrative hearing. Under IDEA, school districts must create an IEP for each disabled child. If parents believed their child's IEP is inappropriate, they may request an "impartial due process hearing." However, the Act is silent as to who bears the burden of persuasion at such a hearing.

On November 14, 2005, the U.S. Supreme Court issued a decision. Justice Sandra Day O'Connor wrote the decision and was joined by Justices Stevens, Scalia, Kennedy, Souter, and Thomas. Justices Ginsberg and Breyer filed dissenting opinions. Chief Justice Roberts recused himself and did not take part in the case.

The majority held that, "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. In this case, that party is Brian, as represented by his parents. But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ."

### **Self-Incrimination: United States v. Lawrence Antelope, 395 F.3d 1128, (January 2005)**

The Ninth Circuit Court of Appeals partly reversed a district court decision requiring that defendant Antelope participate in a sex offender treatment program following his conviction for ordering child pornography over the internet. The treatment program required Ante-

lope take regular polygraph examinations and stipulated that anything he revealed concerning his past sexual history could be used against him legally.

Antelope refused to comply alleging violations of his Fifth Amendment rights which led him to receive prison time. The district court dismissed Antelope's suit asserting lack of jurisdiction. The Appeals Court reversed the lower court finding that jurisdiction existed as well as the treatment program was inappropriately punishing Antelope for asserting his right against self-incrimination concerning his past actions. The Ninth Circuit held Antelope was entitled to the Fifth Amendment's core protection of immunity before being compelled to give incriminating testimony in a non-criminal case.

### **Criminal Intent: State of Oregon v. Carl Cortez Rutley, 202 OrApp 639, (November 2005)**

The Oregon Court of Appeals (Court) reversed a trial court decision concerning the elements of proof needed to convict defendant Rutley of violating ORS 475.999 (delivering a controlled substance within 1,000 feet of a school). The Court found the trial court erred by denying the prosecutor had to prove the defendant had knowledge concerning the distance of the action from the school and failing to instruct the jury accordingly.

The Court analyzed the case by finding in the absence of a culpable mental state being explicitly prescribed in the statute, the prosecution was required to prove the culpable mental state of "knowingly" it had specified in the indictment. The Court determined a rational trier of fact could have concluded from the

evidence presented at trial that defendant knew he was facilitating a drug deal within 1,000 feet of the school. However, the Court found that the trial court improperly failed to give a jury instruction stating the jury had to find the defendant knew he was within 1,000 feet of the school in order to convict him of ORS 475.999. Thus, it reversed and remanded the case for a new trial.

### **Murphy v. Arlington Central School District Board of Education, (2d Cir. Mar. 29, 2005)**

The parents of Joseph Murphy prevailed in their IDEA suit to recover reimbursement for expert fees from the Arlington Central School District (NY). Arlington Central School District appealed the award of \$8,650 in fees to the U. S. Court of Appeals for the Second Circuit. The U.S. Court of Appeals for the Second Circuit ruled that a prevailing party is entitled to recover expert fees under the Individuals with Disabilities Education Act (IDEA). The U.S. Supreme Court granted certiorari on January 06, 2006 and will decide whether parents who prevail in special education cases may be reimbursed for the costs of their experts and/or educational consultants.

### **Appeals – Preservation of Error: State ex rel DHS v. Parmentier, 203 OrApp 677 (1/18/06).**

Independent grounds for termination of parental rights – unfitness under ORS 419B.504 and neglect under ORS 419B.506 were both bases of the trial court's order terminating parental rights in this case. On appeal the mother only challenged unfitness. The Court of Appeals held that because the mother had failed to challenge an independent and sufficient ground for termination of parental rights

## Recent Cases, Continued

they must affirm. Citing *State ex rel DHS v. Squiers* (1/18/06), a case issued on the same day as *Parmentier*, which rejected the legal sufficiency of a similar neglect ground as that on which termination was based in *Parmentier*, the Court noted the reason for its opinion: “. . . [B]ecause this case presents an issue of non-preservation that is of utmost importance in appeals involving termination of parental rights. . .” The Court noted that the mother’s brief did not include a single citation to ORS 419B.506. And “. . . Mother has advanced colorable challenges to one ground for termination but has failed to challenge an independent, alternative basis for termination. Mother’s prosecution of the appeal in that fashion is inherently flawed.”

**Termination of Parental Rights, Neglect: *State ex rel DHS v. Squiers*, 203 OrApp 774 (1/18/06).**

This appeal of a termination of parental rights from Lane County holds that: 1) a finding that a parent failed to implement a plan designed to lead to the integration of the child into the mother’s home is insufficient to constitute neglect under ORS 419B.506, which in light of the specific examples of neglect listed in ORS 419B.506(1),(2) and (3) and applying the maxim *ejusdem generis* to other factors, requires a parental failure to maintain contacts, either financial or personal, with the child; and 2) for the state to prove that mother’s borderline personality traits comprised a condition seriously detrimental to the children, the state must prove by clear and convincing evidence that the condition rendered the parent unfit at the time of the termination of parental rights proceeding, which the state failed to do in this

case because: a) these children were never abused by anyone, mother had come to realize father was dangerous, mother had divorced father and had no contact with him for two years, and mother did not have a pattern of abusive relationships; b) although mother struggles with the children’s special needs, her parenting skills are not so uncommonly inadequate as to constitute a serious detriment to the children; and c) the state failed to prove that mother’s previously messy home, which the court was skeptical could be considered seriously detrimental anyway, was unsuitable “*at the time of the termination hearing*”.

***State ex rel DHS v. Huston*, 203 Or App 640, (January 18, 2006.)** Following the Supreme Courts instructions in *State ex rel SOSCF v. Stillman*, 333 Or 135, 36 P3d 490 (2001) and *State ex rel Dept. of Human Services v. Smith*, 338 Or 58, 106 P3d 627 (2005), reversed this termination of parental rights case. The mother appealed from a judgment terminating her parental rights on the ground that she is an unfit parent under ORS 419B.504 by reason of her emotional illness, mental illness, and mental deficiency. The majority held that “the state failed to prove by clear and convincing evidence that [the] mother’s conditions rendered her unfit as of the time of the [termination] hearing” and explained that she “should have the opportunity to demonstrate her post-treatment parenting skills, particularly in light of the fact that [her] most recent treatment providers uniformly agree that she possesses adequate parenting skills.”

Chief Judge Brewer’s concurrence highlighted the conflict on the

court in this case: “. . . [T]wo outstanding appellate judges, former Chief Judge Deits and Presiding Judge Edmonds, have painstakingly reviewed and summarized the trial court record and written cogent opinions that arrive at defensible, but diametrically opposed, conclusions about mother’s fitness as a parent and the prospects for safe reunification of this family. That process has taken an extraordinary length of time, but it has been necessary for this court to acquit its statutory obligation, on a cold record, in a very close case, to review *one of the most important types of decision that comes before us: the determination of a child’s future in the context of a struggle over family survival.*”

In her dissenting opinion, Judge Deits argued that this is the type of case in which the appellate court should defer to the juvenile court’s assessment of the mother’s credibility: “In addition to the fact that, based on my review of this record, I find that there is clear and convincing evidence to support termination of mother’s parental rights, I also believe that this is a case where the credibility of the witnesses is quite important and that we should give considerable deference to the trial court, which had the opportunity to observe the witnesses firsthand.”

***Crawford* Applied in Termination:** The Kentucky Court of Appeals applied *Crawford* to vacate a trial court ruling terminating parental rights based on allegations of sexual abuse made by the child, who did not testify at the trial. *A.G.G. v. Commonwealth*, 2005 WL 1703599 (Ky. Ct. App. 2005), review granted (Ky. Nov. 16, 2005). (Continued, page 10)

## Continuing Legal Education and Conferences

### UNIVERSITY OF OREGON SCHOOL OF LAW HOSTS (FREE) CONFERENCE ON CHILDREN'S NEED FOR NURTURANCE

Scholars from around the country will speak at a conference on *Protecting Children's Need for Nurture: Proven Strategies and New Ideas* at the University of Oregon School of Law March 24-25. Experienced and respected Oregon experts will comment on the presentations, relating them to current Oregon law and practice. The conference is sponsored by the Oregon Child Advocacy Project, a new program at the University of Oregon Law School supported by a generous gift from Duncan Campbell, founder of Friends of the Children.

The keynote speaker will be Dr. Joy Osofosky, a professor at Louisiana State University Medical School, who is a member of the Pew Commission on Children in Foster Care and president of Zero to Three, a major national group that promotes the wellbeing of children during their first three years of life. She will speak at noon Saturday on *Healing the Child in Juvenile Court: Using An Infant Mental Health Approach*.

Panels of presenters will discuss four major topics during the conference: Multiple Parenthood, Parenting after the Parents Have Split Up, Comprehensive Child Welfare System Reform, and Noncustodial Parents in Juvenile Court. Among the Oregon experts who will provide commentary are Hon. Doug Mitchell, Lane County Circuit Court; Ingrid Swenson, State Office of Public Defense Services; and Angela Sherbo, Juvenile Rights Pro-

ject.

The conference, including breakfast and lunch on both March 24 and 25, is **free** to those who register no later than March 9. The conference has been approved for 8.25 hours of general CLE credit, for which the cost is \$100.

The keynote speaker will be Dr. Joy Osofosky, a professor at Louisiana State University Medical School, who is a member of the Pew Commission on Children in Foster Care and president of Zero to Three, a major national group that promotes the wellbeing of children during their first three years of life. She will speak at noon Saturday on *Healing the Child in Juvenile Court: Using An Infant Mental Health Approach*.

For more information and registration forms, please visit the conference website at: <http://www.law.uoregon.edu/org/child/events.php>, or email Professor Leslie Harris at: [lharris@law.uoregon.edu](mailto:lharris@law.uoregon.edu).

### Save the Date: Pathways to Adulthood 2006 Conference

Don't miss the opportunity to network with your colleagues and find out what is new in the field of Independent and Transitional Living. The *Pathways to Adulthood* conference, sponsored by the United States Department of Health and Human Services, Administration on Children, Youth and Families, Administration for Children and Families, Children's Bureau, and Family and Youth Services Bureau, is scheduled for May 17-19, 2006 in **Portland, OR**. TLP Grantee and ILP Coordinator meetings will occur prior to the conference.

Participants at the conference will hear stimulating keynote speakers, select from 55 workshops, hear the latest information from federal officials on IL/TL initiatives, and participate in local site visits of exemplary programs. This conference is coordinated by the University of Oklahoma National Child Welfare Resource Center for Youth Development, a service of USDHHS Children's Bureau. Stay tuned to <http://www.nrcys.ou.edu/conferences.shtml> for updates.

### Transition Planning for Teens Aging out of Foster Care, a Free CLE at the Multnomah County Juvenile Court Complex

Julie McFarlane and Jennifer McGowan, attorneys at the Juvenile Rights Project, and Rosemary Iavenditti, the Independent Living Coordinator for DHS, will present information on new legal requirements for youth aging out of foster care. SB 808, passed in 2003, and SB 1034, passed in 2005, require DHS and the juvenile court to help youth plan for a successful transition from foster care.

Rosemary Iavenditti will discuss the services available through the state's Independent Living Programs.

The CLE is FREE and no registration is required. One CLE Credit has been applied for.

Date: March 15, 2005

Time: Noon to 1:30 p.m.

Place: Large Conference Room, Multnomah County Juvenile Court Complex

(For more Conferences and CLEs, see page 11)



## “Inclusive Practice” and Reunification by Meyer Goldstein, J.D.

“Inclusive practice” describes an approach to child welfare practice which actively attempts to involve biological parents in the foster care of their children. Dr. Sonya J. Leathers, of the Jane Adams College of Social Work at the University of Illinois at Chicago, published a study on the use of inclusive practice. The question was whether utilizing inclusive practice would result in higher visitation rates, and ultimately higher reunification rates, for mothers whose children are in foster care.

Inclusive practice involves the biological parents in various aspects of case management, such as placement decisions, school meetings and medical appointments. The research attempted to determine whether utilizing inclusive practice would lead to more parental visitation and increase the likelihood of reunification.

Overall, the researchers concluded that maternal visitation provides more reliable predictive information about the likelihood of reunification than maternal problems such as mental health issues or substance abuse. Utilizing inclusive practice resulted in more parental involvement, more visitation and ultimately a better reunification rate.

The study points out that one consequence of the Adoption and Safe Families Act (ASFA) is that efforts are made to move children more quickly towards reunification. It therefore becomes important to understand what services are most likely to help achieve reunification.

While parental visitation is clearly an essential aspect of a reunification plan, little study has been done to identify practices which increase parental visitation. It has been shown that the fre-

quency of visitation is strongly related to the likelihood of reunification.

There are many factors that hinder parental visitation. These include case worker and agency capabilities and parents’ psychological reactions to their children’s removal.

To evaluate the effects of inclusive practices, the study looked at two elements. These were the use of inclusive visiting practices and the degree of parental involvement in other types of care. Inclusive visiting practices focus on having visits at the foster home or the biological parent’s home, rather than in neutral, public or institutional settings.

The researchers used statistical methods to isolate the effects of inclusive practices and visitation on the likelihood of reunification. They attempted to exclude the effects of parental mental health or substance abuse and the child’s adaptation to foster care.

The frequency of the mother’s visitation was found to be a stronger predictor of reunification than maternal substance abuse. Similarly, where children are in care for longer periods, it is actually the frequency of visitation in that context, rather than the length of foster care, which affects expectations of reunification. Maternal mental health was, however, a significant factor in predictions of reunification.

Factors that were predictive of reunification included maternal participation in case proceedings, school meetings and medical appointments. Thus, the mother’s participation in case proceedings in a more general way overrides factors such as substance abuse in predicting reunification.

A parallel finding concerned the location of visits. Parents who visit in either the foster home or the parents’ own homes visit more frequently. Because there is an association between visiting frequency and these visitation settings, this supports the view that inclusive practice is beneficial.

Inclusive practice results in more visitation both because of the location of visits and because of greater overall parental involvement. This, in turn, increases the likelihood of reunification. Thus, the use of inclusive practice is associated with factors that increase visitation, and increased visitation tends to increase the likelihood of reunification. The study concludes that efforts should be made to further implement and study inclusive practices. The article, “Parental Visiting and Family Reunification: Could Inclusive Practice Make a Difference?”, was published in the journal, *Child Welfare*, Vol. LXXXI, #4, July/August 2002. A reprint of the article is available at:

<http://www.aecf.org/publications/pdfs/cwla2.pdf>.

**Clackamas County Sheriff:  
County Forced to Release Juveniles due to Overcrowding,  
Lack of Facility**

*The Oregonian* reported on January 26, 2006, that Clackamas Sheriff Craig Roberts said the county lacks adequate space to incarcerate juveniles. Clackamas County, with a population of over 360,000, has no juvenile facility of its own.

Clackamas rents 14 beds in the Multnomah County juvenile detention facility. According to the Sheriff, their leased juvenile detention capacity is always full. (Continued on page 10)

## Recent Cases — Continued from Page 7

On appeal the parents challenged the admission at trial of one child's hearsay statements by a counselor and physician, claiming the statements were testimonial and inadmissible under *Crawford v. Washington*, 541 U.S. 36 (2004) [holding that testimonial statements of a witness who does not appear at trial are inadmissible in a criminal trial unless the declarant was shown to be unavailable to testify and the defendant had an opportunity for cross-examination]. The state in *A.G.G.* argued the child's statements were admissible under the medical exception to the hearsay rule. *Crawford* dispensed with reliability tests including the medical exception and recognized that the only way to assess reliability of testimonial statements by individuals who do not testify at a criminal trial is through cross-examination. The Kentucky Court found the child's statements in this case to be testimonial since they accused several people of child abuse and could reasonably be believed to be available for use at a later trial. Other courts have declined to apply *Crawford*'s Sixth Amendment Confrontation Clause analysis to children's statements in dependency and termination of parental rights cases. *Los Angeles County Department of Children and Family Servs. V. Hugo M.*, 31 Cal. Rptr. 3d 804 (Ct. App. 2005); *In re D.R.*, 616 S.E. 2d 300 (N.C. App. Ct. 2005). Yet to be raised in reported cases is the question of whether a *Crawford*-type analysis of reliability of children's statements under Due Process-Fundamental Fairness would also result in exclusion of such statements unless the child is made available for cross-examination.

**Oversight of Child Welfare Agency: *In re Interest of Veronica H.***, 14 Neb. App. 316, 707

NW 2d 29 (12/13/05) is a case in which a frustrated juvenile court judge ordered the child welfare agency to reassign a case to "... an experienced case manager with demonstrated knowledge of incest cases. . .". 14 Neb. App. At 320-21. The Appellate Court set out the juvenile court's statement: "It's quite distressful to me to have to keep saying this, . . . but from the first day of disposition, this matter has been about [DHHS] and [its] total lack of accountability in terms of case management, in terms of any substantive understanding of the dynamics of incest cases and it continues." Id at 320.

The Appellate Court upheld the juvenile court's ruling finding from statutory language that it was the Legislature's intent to remove [DHHS'] complete control of a minor whose care is given to [DHHS] and that the juvenile court thus had the authority to make the order. The Court quoted from *In re Interest of Crystal T. et al.*, 7 Neb. App at 927-28, 568 N.W. 2d at 483: "The Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interest of the juveniles who fall within it. . . . It is the law in this jurisdiction that juvenile courts have broad discretion to accomplish the purpose of serving the best interests of the children involved.

The Court also rejected the state's separation of powers argument, citing with approval *In re K.C.*, 325 Ill. App. 3d 771, 759 N.E. 2d 15, 259 Ill. Dec. 535 (2001), a case holding that the Illinois juvenile court had the authority to remove or reassign a caseworker, finding that: "The doctrine of separation of powers was not designed to achieve a complete divorce among the three branches of gov-

ernment, nor does it require governmental powers to be divided into rigid, mutually exclusive compartments. . . . When the legislature creates a statute that contemplates an interplay between the courts and the executive branch, court orders directing the actions of the executive agencies do not violate the doctrine of the separation of powers. . . ." See also, Harris, Allen & Wittemyer, Authority of Oregon Juvenile Courts to Review DHS Actions in Child Dependency Cases, The Oregon Child Advocacy Project, 2005, <http://www.law.uoregon.edu/org/child/project.php> .

### Clackamas, cont'd. from p. 9.

Clackamas County houses older teens in the county's adult jail, which has a capacity for 350 inmates.

The article said that Clackamas County spends twice as much to place youths in Multnomah County's Donald E. Long Detention Center (\$185/day) as they spend on adults in the county jail.

County officials estimate that their own juvenile detention center could be run for approximately \$125/day per youth, but Clackamas County voters defeated a county measure to construct a juvenile detention center for the county. The \$13 million proposal would have given the county 25 detention beds and 14 shelter beds.

*Postscript:* Clackamas Juvenile Director, Doug Poppin, responded to an inquiry from Juvenile Rights Project on Feb. 6th regarding juveniles housed in the county jail. He said that all of the youth housed there are over the age of 16 and charged with Measure 11 offenses.

# UPCOMING CONFERENCES & CLE's

## **ALLEGATIONS OF SEXUAL ABUSE: Advocating for Clients in Dependency and Delinquency Cases**

The Oregon Criminal Defense Lawyer's Association's spring Juvenile Law Seminar will be held Friday and Saturday, April 21-22, 2006 at the Hallmark Resort in Newport.

Speakers will address: Sexual Development and Sexual Behavior in Children and Adolescents; a panel entitled "Going Home: Zealous Advocacy in Dependency Sex Abuse Cases;" The Investigation of Sex Abuse Allegation Involving Children; Juvenile Sex Offender Risk Assessment and Treatment Protocols; False Allegations: The Role of Coercion, Suggestion and False Memory; Crawford and Other Evidentiary Issues; and Relief from Registration. [www.ocdla.com](http://www.ocdla.com).

## **Trauma and Children's Mental Health: "Implementing Trauma Informed Recovery Principles in Children's Mental Health Organizations"**

Featuring: Sandra L. Bloom, M.D., President and CEO, Community-Works

Embarcadero Hotel, Newport, OR, April 6-7, 2006.

Recent research has demonstrated the degree to which brain development is affected by experience, trauma and otherwise, particularly in early childhood. This program will discuss current research findings about the impact of exposure to overwhelming stress on the mind, body, and soul of a child and will address the ways in which abuse and neglect in childhood adversely affect the sense of self, the ability to relate to others, and the development of conscience. For more information about conference details, costs, accommodations and

other information, go to: <http://www.charpp.org/index-2an.html>

Or contact: Kiesha Sanchez  
Edgefield Children's Services  
PHONE: (503) 736-6859

## **Trauma Informed Approaches in Child-Serving Organizations**

A one-day version of the training listed above will take place April 4, 2006 in Medford, OR. Go to: <http://www.soastc.org/Training.htm>

## **NACC ANNUAL CHILDREN'S LAW CONFERENCE – SAVE THE DATE!**

The National Association of Counsel for Children's Annual National Conference will be held October 12 – 15, 2006, at the Seelbach Hilton in Louisville, Kentucky. For more information visit: [www.NACCchildlaw.org](http://www.NACCchildlaw.org).

## **Building Successful Alliances to Improve Outcomes**

The Child Welfare League of America Juvenile Justice Division's 2006 Juvenile Justice National Symposium will be held May 31 – June 2, 2006, at the Hyatt Regency, San Francisco Airport. Workshops will include: Dependency and Delinquency: A Discussion of the Longitudinal Research and Its Role in the Development of Public Policy; Emerging Issues in Adolescent Brain Development: Implications for Youth in the Justice System; Diversion and Probation: How One Community is Making a Conscious Decision to be Different; Promoting a More Coordinated and Integrated Juvenile Justice and Child Welfare System; Breaking the Intergenerational Cycle of Maltreatment; Trauma Among Children and Ado-

lescents in Juvenile Justice and Residential Settings, and much more. Register online at [www.cwla.org/conferences](http://www.cwla.org/conferences).

## **BACK TO BASICS: RESEARCH, TREATMENT AND RISK MANAGEMENT**

The 9<sup>th</sup> Annual Training Conference of the California Coalition on Sexual Offending will be held May 10 – 12, 2006, at the Marriott San Mateo at the San Francisco Airport. The featured speaker is Dr. Doug Epperson, who developed the Juvenile Sexual Recidivism Risk Assessment Tool (JSORRAT-II). Other workshops will include: Working with Sexually Aggressive Children; Five Simple Ways to Enhance Relapse Prevention; Juvenile Research Outcome & Conclusions; Paradigm Shift in Assessing Sexually Abusive Children & Adolescents and much more. For conference registration go to: [www.ccoso.org](http://www.ccoso.org).

## **33<sup>rd</sup> NATIONAL CONFERENCE ON JUVENILE JUSTICE**

Co-sponsored by the National Council of Juvenile and Family Court Judges and the National District Attorneys Association, this Conference will be held March 26 – 29, 2006, at the Hyatt Regency in Denver. Workshops will include: What Works – Evidence-Based Programs; Talking to Kids: Memory and Suggestibility; Immigration Issues in Juvenile Court; Dually Adjudicated Youth; Ethics for Defense Counsel; Understanding Psychological Evaluations; The Effect of Domestic Violence on Children; The Defense Perspective in Juvenile Law; Applying Crawford to Juvenile Abuse and Delinquency Cases, and much more. To register online go to [www.ndaa.org](http://www.ndaa.org) and click on "Events".

## 7 in 10 Children in Foster Care due to Parental Drug Abuse

The Oregon Department of Human Services (DHS) released data in November 2005 analyzing the reasons Oregon children were removed from their parental homes and placed into foster care between 1997-2004.

In 2004, 3,925 (or 71.2%) of the 5,515 minors who entered the Oregon foster care system did so,

in part, due to parental drug abuse.

This total presented the fourth straight year with significant increases in both the total number of children entering the foster care system and the amount of cases where parental drug abuse was listed as one basis for removal.

Although DHS states it doesn't track the number of cases con-

nected to methamphetamine, DHS has asserted that just over half of the total number of home removal cases in 2004 were linked to meth. Additionally, 249 entrants (or 4.5%) into the Oregon foster care system in 2004 listed both parental drug abuse and sex abuse as the bases for removal.

## Taser, continued from page 2.

makes these recommendations so that similar incidents can be avoided in the future:

- that every child in Oregon with disabilities manifesting in severe behaviors should have an updated and well-implemented behavioral support plan (BSP);
- that the BSP and any crisis plan be understandable and useful to parents and professionals who work directly with a child;
- that no BSP should ever include police intervention as an inter-

vention, except in circumstances involving an immediate and serious physical threat;

- that schools and treatment providers develop and distribute individualized one-page summaries of known de-escalation techniques to parents and professionals who work with these children;
- that police be shown this document should they ever be called to intervene with such a child;
- that one person be designated to coordinate efforts among the

multiple agencies involved with such children;

- that all such incidents involving police intervention be reported, investigated, analyzed and tracked;
- and that records of any similar incidents in the future be made available in a timely manner to the state's protection and advocacy agency.

*Editor's note: This article originally appeared in the January 2006 MDT Quarterly.*

## Oregon Child Advocacy Project at U of O School of Law

In 2005 philanthropist and child advocate Duncan Campbell helped establish the Oregon Child Advocacy Project at the University of Oregon School of Law. Mr. Campbell, a 1973 graduate of the law school, also founded Friends of the Children, a nationally recognized program that provides dedicated, long-term mentors to at-risk children.

The Oregon Child Advocacy Project recently published a paper

on the authority of Juvenile Courts to review the actions of the Oregon Department of Human Services (DHS) in child dependency cases.

The report was authored by the project's director, Professor Leslie J. Harris, and 2005-06 Campbell fellows, law students Molly Allen and Tehan Wittemyer. The full report can be accessed at:

<http://www.law.uoregon.edu/org/child/docs/dhs.pdf>

Information about the Oregon Child Advocacy Project can be found on their web site at: <http://www.law.uoregon.edu/org/child/project.php>





## Notifying Juvenile Court Clients of their Appeal Rights

Attorneys appointed to represent indigent clients in Oregon juvenile courts are required to inform their clients of their rights to appeal judgments and dispositions. In many circumstances those attorneys are also required to initiate the appeal by filing a notice of appeal.

Appointed counsel's responsibilities concerning appeals arise from several sources. The process for appealing judgments from the juvenile court is specified in ORS 419A.200. Anyone whose rights or duties have been adversely affected by a juvenile court judgment may appeal that judgment. ORS 419A.200(1). The notice of appeal must be filed not later than thirty

days after the judgment is entered. ORS 419A.200(3)(c). ORS 419A.200(A)(4) states that an attorney shall file and serve the documents necessary to begin an appeal if their client in the juvenile proceedings asks them to do so.

The Performance Standards for indigent defense representation also contain requirements concerning clients' appellate rights. In the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases, Standard 2.11 defines post-disposition procedures. Section 2 requires an appointed attorney to inform the client of their appeal rights and to explain the steps necessary to perfect the ap-

peal. If the client wants to appeal but requires the assistance of counsel the appointed attorney must file the notice of appeal and take the steps necessary to preserve the appeal. The attorney must also inform the client of any right to be released pending disposition of the appeal Standard 2.11(3).

The draft proposed amended version of these standards contains the same requirements in Standard 2.11. Section 3 now contains the requirement to inform the client of the right to appeal the judgment. Where the client wishes to file an appeal but requires legal assistance

(Continued on page 14.)

## New York City Foster Care System Focuses on Adoption of Teenagers

New York City has adopted a new approach over the last several years to deal with its skyrocketing portion of foster care youth that are teenagers (above age 10). Approximately 17,000 children are currently in the city's foster care system. About half (50%) are teenagers—an increase from the 33% of the teenagers who made up the foster care population in 1991.

The increase in the proportion of teenagers in care has been attributed to the public's belief that younger kids are more desirable for adoption and that teenagers are more likely to be troubled and emotionally scarred. Many studies suggest that teenagers who age out of the foster care system at age 18 are more likely to be poor, unemployed, homeless and/or incarcerated.

These outcomes have caused New York City's foster care system to emphasize finding adoptive

homes for teenagers. The federal and New York State governments have financially supported city efforts to promote adoptions, including adoptions of teenagers.

In 2002 city welfare officials conducted a study in which a different strategy was developed than simply trying to convince families wanting a younger child to adopt a teenager. The new approach has partly focused on recruiting families from people who have been playing significant roles in the teenagers' lives (i.e., teachers, coaches, neighbors, counselors). Additionally, cable-access television shows have been launched featuring teenagers (both in and recently out of foster care) who talk about their lives intimately (e.g., lost relationships, pain and disappointments, and the ongoing desire to be part of a family).

*-New York Times, 12/9/2005, p.A28*

## On-Line Resources

Several resources addressing issues for youth transitioning out of foster care are available through the Chapin Hall Center for Children website: [www.chapinhall.org](http://www.chapinhall.org).

These include: The Midwest Evaluation of the Adult Functioning of Former Foster Youth; Dependent Youth Aging Out of Foster Care: A Guide for Judges; and On Their Own: What Happens to Kids When They Age Out of the Foster Care System.



# ZEALOUS ADVOCACY: THE PERMANENCY HEARING

By Julie H. McFarlane, J.D.

Permanency Hearings are a critical stage of any juvenile court dependency case at which counsel for children and parents must be prepared to zealously advocate for their client's desired permanent plan, or, in the case of younger children, the permanent plan that is in the best interests of the child.

The Permanency Hearing is the point at which parents and children who desire reunification must affirmatively demonstrate the parent's ability to provide a safe and permanent home for the child in a reasonable time and establish a reasonable timetable for reunification. ORS 419B.470.

Whether the permanent plan approved by the court at this stage is to achieve reunification, adoption, guardianship, permanent relative placement or another planned permanent living arrangement (APPLA) – the five approved permanency plans under the Adoption and Safe Families Act (ASFA), the course and intensity of the case is likely to change as a result of the Permanency Hearing.

Permanency Hearings were first required by The Adoption and Safe Families Act (ASFA), Pub. L. No 105-89. ASFA requirements were subsequently incorporated into ORS 419B.470 – 476. A Permanency

Hearing may be held at any time after the initial shelter hearing and must be held within 30 days of the court finding pursuant to ORS 419B.340 (5) that DHS is relieved, because of the parent's aggravated circumstances, including convictions of certain crimes or prior involuntary termination of parental rights, from providing services to effect reunification.

Most Permanency Hearings, however, are held as required by ORS 419B.470 (2), within 12 months of jurisdiction being found in the case or 14 months from removal, whichever comes first. ORS 419B.470. (Continued on page 15)

## SchoolWorks, continued from page 1.

It also has reduced the number of moves between schools for students and assisted securing additional services for children when necessary.

SchoolWorks originally served JRP clients ages 8-15 who were not in school, who had

*"The Juvenile Rights Project levels the playing field for children and youth whose families are unable to advocate for their educational needs."*

*—Doug Stamm, Executive Director,  
The Meyer Memorial Trust*

behavioral problems or who were academically behind. The new grant money will allow SchoolWorks to serve more of these children and increase the age range to

include students from kindergarten through high school.

City Commissioner Dan Saltzman, who chairs the Children's Investment Fund Allocation Committee said, "We are pleased to be part of this advocacy and with the help of Meyer Memorial Trust, increase the number of children the program serves."

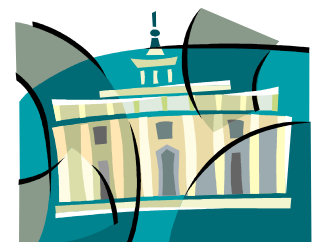
## Notice of Appeal Rights, Continued from page 14.

the attorney must direct the client to the appropriate resources. If the client is a juvenile, upon the client's request the attorney must file the documents necessary to begin the appeal and move to have appellate counsel appointed. Section 4 requires the appointed attorney to advise the client of any right to be released pending disposition of the

appeal.

The form and detailed instructions for filing an appeal from juvenile court can be found at the Appellate Court Records section of the web site for the Oregon Judicial Department. This information is available at the following web link:

[http://www.ojd.state.or.us/web/OJDPublications.nsf/Files/15-Juvenile.pdf/\\$File/15-Juvenile.pdf](http://www.ojd.state.or.us/web/OJDPublications.nsf/Files/15-Juvenile.pdf/$File/15-Juvenile.pdf)



## Zealous Advocacy, Continued from page 14.

Because a Permanency Hearing can permanently change the course of a case, it is a much more significant hearing than a regular review hearing. More court time should be allotted for a Permanency Hearing so that there is sufficient time for testimony and presentation of other evidence as well as for argument on these most important decisions in the case. Attorneys should spend more time preparing for these important hearings and be prepared to present their own plan to achieve their client's goals in the case. The Oregon State Bar Association's Specific Standards for Representation in Juvenile Dependency Cases, Standard 3.14 (Draft 5/31/05), emphasizes the importance of preparation for the Permanency Hearing, stating: "A lawyer should take particular care in preparing for a permanency hearing and ensure that the lawyer is well acquainted with the case history and case files. The lawyer should be prepared to present favorable evidence and zealously advocate the client's position about the permanent plan."

Lawyers should also be aware that a Permanency Hearing "is a discrete proceeding before the juvenile court. . . ." *State Ex rel DHS v. Lewis*, 193 Or App 264, 89 P.3d 1219 (2004). Thus, the record for appeal consists only of the evidence produced at the Permanency Hearing – not the entire record of the case. Lawyers should consider offering as exhibits all documents they want the court to consider in making its permanency determination.

Standard 3.14 recommends that the lawyer preparing for a Permanency Hearing be well acquainted with the case history and case files. The lawyer's file should contain copies of important documents from the DHS file as well as treatment and other similar records of the client. The recommended implementation for Standard 3.14, guiding lawyers in preparation for the Permanency Hearing includes:

- 1) Conducting an investigation as required by Standard 3.13 (2) – the lawyer should not be waiting to receive the DHS plan, but rather affirmatively investigating the positions of the other parties and witnesses and evidence that can best support the client's position;
- 2) Being prepared to address what the long-term plan for the child should be;
- 3) Being prepared to present evidence on the client's proposed permanent plan for the child, including whether to continue toward a plan of family reunification or implementation of a concurrent plan;
- 4) Consider submitting a written permanency memorandum in support of the client's position; and

- 5) Presenting live witness testimony on behalf of the client's position.

Requesting a Permanency Hearing can be a good tactic to obtain services or compliance with services, increase visitation, expedite reunification or begin implementation of the alternative permanent plan. As in all hearings, counsel should analyze whether reasonable or active efforts have been made by DHS. A "no reasonable or active efforts" finding at the Permanency Hearing stage can assure necessary services are provided and delay further implementation of a permanent plan operated by a client.

Lastly, the lawyer must carefully review the court order from the Permanency Hearing with the client and discuss the client's option to seek review, including appellate review of any final orders. The Permanency Hearing is a discrete part of the juvenile proceeding and is subject to appeal. *State ex rel DHS v. Lewis*, supra.

### Jackson County Protocol for Sex Offender Treatment Disclosures

Jackson County, on February 18, 2006, issued its revised protocol for disclosures made by sex offenders in court-ordered treatment programs. The Jackson County District Attorney's Office has a general policy of non-prosecution for further disclosures made in treatment for offenders already convicted of sex offenses.

The protocol covers newly disclosed child sex abuse offenses "similar in scope and severity to the crime of conviction." The policy of non-prosecution applies for offenses committed prior to sentencing for the original offense, committed in Jackson County and offenses that come to the attention of authorities solely through the offender's disclosure in treatment. The policy of non-prosecution does not apply for newly-disclosed offenses involving forcible compulsion. The policy also stipulates that the District Attorney's office reserves the right to prosecute in cases of "unusual or special circumstances."

The protocol was designed with the understanding that routine prosecution of cases discovered through treatment disclosure would shut down further admissions for past crimes. The protocol seeks to identify victims who may not have come forward so that they can access treatment and other victims' assistance services.

# In Memoriam

## The Honorable Stephen B. Herrell

1938—2006



Retired Multnomah County Circuit Judge Stephen B. Herrell passed away on Sunday, February 12, 2006, following a three-year struggle with brain cancer. He served with distinction on the bench from 1981 until his retirement in 1999, and upon his retirement he was appointed as a senior judge in courts throughout the state by special assignment of the Oregon Supreme Court.

Judge Herrell founded the first chapter of Court Appointed Special Advocates in the state of Oregon in 1986. He also served as vice president of the national CASA organization.

Judge Herrell also served as president of the National Council of Juvenile and Family Court Judges in 1998-99 and as its interim executive director in 2001. Fellow judges from around the country and here in Oregon attended Judge Herrell's memorial service. They paid tribute to the Judge and noted his tireless advocacy on behalf of victims of domestic and family violence, in particular. He worked successfully on the state and national level to improve the ways that police, prosecutors and courts respond to domestic violence.

Judge Herrell will be fondly remembered by his colleagues and by those who appeared before him as a distinguished jurist who made our juvenile and family court better able to serve those children and families in need of its assistance.

<http://www.jrplaw.org/>



**Juvenile Rights Project, Inc.**  
**123 NE 3rd Avenue**  
**Suite 310**  
**Portland, OR 97232**